

**IN THE HIGH COURT OF JUDIATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FAMILY COURT APPEAL NO.51 OF 2004**

Sau.Shital Nilesh Agarwal .. Appellant.

Versus

Shri Nilesh Lalchand Agarwal .. Respondent.

---

Mr.A.P.Vanarse for the appellant.  
Mr.Pramod J.Pawar for the respondent.

**CORAM : S.B.MHASE &  
D.B.BHOSALE, JJ.**

**DATE : FEBRUARY 8, 2005.**

**P.C.**

1. Heard.

2. The learned counsel for the appellant and the respondent are present. Both the husband and wife are also personally present. The husband has initially filed proceedings before the Principal Judge, Family Court No.5, Pune, bearing Petition A No.65 of 2003 under section 9 of the Hindu Marriage Act. The said application was allowed and the appellant was directed to resume cohabitation with the husband-Nilesh forthwith. The said decree is challenged by the appellant-wife. Now the parties have come to settle the matter and they have decided to take divorce by mutual consent and,

accordingly, the consent terms have been submitted. However, initially the proceedings is filed by the husband for restitution of conjugal rights and, therefore, the husband has submitted an application for amendment of the petition converting it alternatively the application for divorce by mutual consent. Mr.Vanarse, learned counsel for the appellant have also filed pursis accepting the amended pleadings and now as a result of such amendment the application stands converted as the application for divorce by mutual consent of the parties. The earlier application for restitution of conjugal rights was presented on 27.1.2003 and prior to that matrimonial relations have come to an end as a result of dispute between the parties. The matter was pending before the trial court and this court and, therefore, the period as required under law for passing decree of mutual consent is over and we do not find any problem in accepting the consent terms wherein the parties have agreed to give divorce by mutual consent.

3. The consent terms are presented by the parties. The consent terms are taken on record and marked 'X' for identification. We have verified that the parties have voluntarily entered into the consent terms and have signed the same. We have

also verified as to whether the consent terms have been understood by the parties. Both the advocates have made a statement that the consent terms were properly explained to both the husband and wife. Both the husband and wife have accepted that as per clause 4 to the consent terms the articles have been exchanged and each one have received their own articles and there is no dispute in respect of clause 4. The appellant admits the receipt of Rs.1,50,000/- by demand draft as mentioned in clause 5. We make it clear that the undertaking given at various place in the consent terms are hereby accepted by this court. Since we have found that consent terms have been recorded voluntarily and with full understanding, we accept the consent terms. Therefore, we set aside the impugned decree dated 6th February, 2004 passed by the Family Court in Petition A No.65/2003 filed by the husband and we substitute the decree in terms of consent terms marked "X". The appeal stands disposed of. Certified copy expedited.

4. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar of this court.

:4:

(D.B.BHOSALE, J.)

(S.B.MHASE, J.)

: hcs/sbm/